IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1419 OF 1984

Indian Bank .. Plaintiffs

Vs.

1. Kiran Products & Ors. .. Defendants

Mr.A.S.Doctor with Ms.A.Kapadia i/b Pandya Gandhi & Co. for the plaintiffs

Mr.J.P.Dubey i/b M.M.Vaishnav for the defendants

CORAM : S.U.KAMDAR, J

DATED : 4TH JULY, 2005

P.C.:

1. The present suit has been filed by the plaintiff for the recovery of Rs.91,495.57 alongwith interest @ 18% p.a. under the medium term loan account. Suit is also filed for the recovery of Rs.98,217.21 with interest @ 18% in respect of cash credit account. Some of the material facts of the present case are briefly set out as under:

2. Some time in or about 12.5.78, plaintiffs

agreed to grant medium term loan facility of Rs.97000/- to the defendants. In respect of the said medium term loan facility defendants agreed to execute a demand promissory note and also executed the agreement for hypothecation of plant and machinery dt.12.5.78 and also medium term loan agreement dt.12.5.98. The Supplemental agreement of hypothecation was also executed by which all the defendants agreed to repay the said amount with interest @ 2% over the Reserve Bank of India rate with a minimum of 11% per annum on daily balances with quarterly rests. The said term loan was renewed from time to time and further documents were executed by the plaintiff. Similarly on 12.12.75 cash credit facility was granted to the defendants initially for sum of Rs.15000/- which was then extended from time to time and in respect of said cash credit facility also defendant executed demand promissory note, a letter of continuing security and an agreement for demand cash credit on hypothecation of moveable property all dt. 12.12.75. At the request of the defendants, the plaintiffs renewed and enhanced the open cash credit facility on or about 14.2.77 to an

amount of Rs.25,000/- and in respect of which the defendants executed various documents. The said demand cash credit facility was renewed on or about 7.2.80 at the request of the defendants and in respect of which the defendants executed various documents. On 1.1.81 at the request of the defendants the plaintiffs renewed the cash credit account and defendants executed the various documents. Defendants agreed to repay the said amount from time to time by instalments. However, the plaintiffs did not make the payment of the outstanding loan amount.

3. It is the case of the plaintiffs that the defendants has executed the acknowledgement of liability and confirmed the amount from time to time. Ultimately, in view of non payment of aforesaid amount by the plaintiffs, defendants issued a legal notice to the defendant on 20.12.83 calling upon the defendants to make aforesaid payment. However, defendants neglected to make said payment. In view thereof, plaintiff has filed suit for the recovery of sum of Rs.1,89,712.78 comprising of Rs.98,217.21 of Cash Credit Account

and Rs.91,495.57 of the Term Loan Account. Plaintiffs have also claimed interest @ 18% on the aforesaid.

4. Defendants have filed written statement dt.21.2.85. In the said written statement, defendants has admitted execution of the said documents. However, it has been contended that because of their negligence the defendants have suffered huge losses and thus, the defendants were unable to make payment to the plaintiffs. It is further contended by the defendants that the defendants could not repay the instalments due to critical situation in which defendants are placed and the plaintiffs refused to give further financial assistance to the defendants. Defendants have also contended that the documents was signed in blank and denied the execution of acknowledgement of liability. On the aforesaid facts, the following issues were framed on 31.10.1996:

ISSUES

1. Whether the plaintiff proves that the

defendants are due in two sums of money of Rs.91,495.57 and Rs.98,217.21 as claimed in the plaint?

2. Whether defendants suffered loss and damages due to negligence of the plaintiff bank in not discharging their responsibility as alleged in para 1 of the Written Statement?

3. Whether the defendants were pressurised to sign various blank documents as alleged in the Written Statement?

4. Whether the interest claimed is exorbitant and illegal as alleged?

5. What relief?

5. Plaintiffs have laid oral evidence of Mr.Harish Kumar Jayee, Chief Manager of the plaintiff bank and has also filed compilation of documents. Compilation of documents is taken on record and marked Exh.P-1 collectively. Oral evidence of plaintiffs' witness has not been cross-examined. The same is therefore, taken as correct. The learned counsel for the defendants states that he has no instruction in the matter and is unable to contact his client. In view thereof, he is unable to prosecute the matter.

6. Matter was on board and was adjourned for 4

times since the learned counsel for the defendants was unable to contact his client. In view thereof, the evidence of the plaintiff has to be accepted. Documentary evidence indicates that there has been an admission of liability on the part of the defendants. The contention of the learned counsel for the defendants that due to their financial constraints they are unable to repay the amount is totally bogus and frivolous. The contention that the documents were signed in blank is also not been proved.

7. In view thereof, there shall be a decree in favour of the plaintiff and against defendants in terms of prayer clause (a) and (b). However, there shall be no order as to costs.